

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6642 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

H D TRIVEDI

Versus

STATE OF GUJARAT

Appearance:

MR BR KYADA for Petitioners
MR BY MANKAD AGP for Respondent No. 1
MR PB BHATT for Respondents No. 2 to 4

CORAM : MR. JUSTICE KUNDAN SINGH

Date of decision: 22/01/99

ORAL JUDGEMENT

By means of this petition, the petitioners sought for a direction to the respondents to pay higher pay scale of Rs.500-900 to the petitioners and consider them as qualified one as per the Circular Annexure - A and also to grant all the consequential benefits and difference of arrears of salary to the petitioners.

2. The petitioners were taken up in service as "Ayurvedic" practitioners in the Rajkot District Panchayat and were appointed in medical dispensaries under the control of District Panchayat in Rajkot District. The petitioner no. 1 was appointed on 1-3-1962, the petitioner no. 2 on 1-6-64, petitioner no. 3 on 12-9-60, the petitioner no. 4 on 21-9-61 and the petitioner no. 5 on 5-7-55 respectively. As they were possessing qualification of "Ayurvedic" they were appointed as "Vaidyas" in Ayurvedic Dispensaries under the control of District Panchayat, Rajkot. There are two types of Ayurvedic practitioner, qualified and unqualified practitioners. There was difference in pay scale also, though they were doing the same duty as Ayurvedic practitioner and under the District Panchayat, Rajkot. The Director of Ayurvedic - respondent no. 2 gave instructions to the District Panchayat through the District Development Officer and the District Ayurvedic Officer to prepare a seniority list as per the Indian Medicine Central Act, 1970. It was also suggested that the list should be prepared and the persons, those who are qualified and possessing qualification as shown in the said Rules should be included according to the seniority. The Circular dated 8-6-1982 was issued whereby the Vaidyas who possess qualifications for being eligible for registration in Part-I of Schedule-II of the Medical Central Council Act, 1975 on the date it came into force i.e. 1-10-76 should be given pay scale of Rs.500-900 with effect from 1-10-9-76. It was also directed that the Vaidyas who were appointed previously due to non-availability of qualified Vaidyas according to the Rules on the basis of experience certificate from private or other source and who have not been registered in Part-I of the Schedule of the Indian Medicine Central Council Act 1970 were considered as unqualified Vaidyas and they were directed to be given pay scale of Rs.350-600 and also the Vaidyas who were appointed in the subsidiary scheme for medical practitioners should also be given the said fixed pay. All the petitioners are possessing qualifications. The petitioner no.1 who is RMP Enlistment,, Petitioner no. 2 RMO Bhisan Ayurved, Visharad, Delhi, petitioner no.3 Ayurved Bhishak RMP, Petitioner no.4 RMP and petitioner no. 5 RMP. The petitioners are possessing required qualification and hence they should be included in Part - II of Schedule-II under the Indian Medicine Central Act, 1970 (hereinafter referred to as the Act) and their pay scale should be fixed in the pay scale of Rs.500-900. But they have been listed in the Schedule-II under qualified Vaidyas. Some other persons who are possessing similar qualifications to the petitioners and also unqualified listed in the

list of the petitioners, are given pay scale of Rs. 500-900. But the same pay scale has been denied to the petitioners though they are possessing the same qualifications and serving under the said Management of the District Panchayat, Rajkot. The petitioners are possessing the requisite qualifications as per the Schedule shown under the Act and all the petitioners are practising in Gujarat and they were also registered under the Gujarat Board of Ayurvedic and Unani System of Medicine, Gujarat State, under the Gujarat Medical Practitioners Act, 1963. As it was decided by the District Development Officer to fix seniority list of the qualified and unqualified Vaidyas, the petitioners made representation to the District Development Officer respondent no. 4 to consider them as qualified Vaidyas and requested them to give all the benefits which are given to the qualified Vaidyas. But the petitioners were listed in the seniority list known as unqualified Vaidyas. The persons listed at Sr.no. 2, 3, 7 and 13 were also listed with the list of unqualified Vaidyas though they were registered in Part-I of the Schedule-II of the Act and they were registered after 1-10-1976 and they have been given pay scale of Rs.500-900 though they were not listed in the list of the qualified Vaidyas but their names were listed in Part-I of Schedule-II of the Act and they were given the benefits of higher pay scale. The petitioners are also possessing the requisite qualifications as per Schedule-II of the Act and also possessing qualifications of All India Ayurvedic Vidyapith, Delhi's Ayurved Degree which is listed in Part-I of Schedule-II of the Act but they are not listed and they have been denied the higher pay scale. The directions of the Government to prepare the seniority list according to the Circular dated 8-6-1980 is bad in law and arbitrary and is liable to be quashed and set aside and other persons similarly situated and qualified serving in the District Panchayat, Jamnagar have also been given the benefit of higher pay scale as per the directions given under the Circular dated 8-6-1980. The petitioners have been denied the same pay scale by the District Panchayat, Rajkot even though they are working in the same dispensaries and doing the same type of work and they are possessing similar requisite qualifications. The action of the District Panchayat, Rajkot is arbitrary and unconstitutional. The degree of the Delhi Ayurvedic Vidyapeeth, viz. Bhishak and Visharad listed in Schedule-II, Part-I under the Act and that qualification was recognized by the Gujarat Government. But the petitioners have not been registered and have not been given the benefit of higher pay scale. G.M.P. which is known as "Gramiya Medical Practitioners" and that

certificate is given to the persons who have practised at least 5/7 years in the village as Ayurved Medical Practitioner, were given the benefits of higher pay scale. The petitioners are possessing the same qualifications right from beginning have been denied the said benefits of higher pay scale. The petitioners also made oral representation to the District Development Officer and the Government to consider their case and to give the higher pay scale as given to the other similarly situated persons. But the respondents have not taken any action.

3. Learned State counsel made a statement that he has filed an affidavit-in-reply on behalf of the respondents no. 3 and 4. Of course, the affidavit-in-reply is not on the record of this file. But the copy of the said affidavit-in-reply has been filed. It is stated therein that as per the practice and procedure pursuant to the Government Circular dated 8-6-1982 if a person is registered as qualified person by the Gujarat Board of Ayurvedic and Unani System of Medicines under Part-I, he shall be entitled to the pay scale of Rs.500-900. The other persons who are not able to get the registration, they are to be treated as unqualified persons and they are to be granted the pay scale of Rs.350-600. The seniority list prepared on 22-9-1980 is not correct and cannot be linked with the implementation of the Circular dated 8-6-1982 as the list prepared earlier on the basis of the position prevailing at the relevant time whereas the Circular was issued in the year 1982. The petitioners have not been able to get the registration under Part-I from the Gujarat Board of Ayurvedic and Unani System of Medicines and hence they are not treated as qualified Vaidyas so far as giving effect of Circular dated 8-6-1982 is concerned. As such the petitioners are not eligible for the benefit of higher pay scale of Rs.500-900. All the petitioners have already retired after reaching their age of superannuation. Mr. G.N. Vyas has expired. Those persons who have already retired and the majority of them are also getting the pensions on the basis of the pay scale granted to them, of Rs.350-600 as required for unqualified Vaidyas.

4. It is admitted that the petitioners were appointed in the medical dispensaries under the control of District Panchayat, Rajkot. But the petitioners were unqualified at the time when they were appointed and they are also unqualified till the date of this petition. Those persons who have obtained the qualifications by undergoing regular study cannot be placed at par with the

persons who have not obtained proper qualifications. The persons who have experience cannot be treated as holding the qualifications.

5. Considering all the facts and circumstances of the case, the Government issued the Circular dated 8-6-1982 which is not discriminatory or arbitrary at all. Merely because the persons holding the qualifications they will not be entitled to the higher pay scale unless they have obtained requisite qualifications as mentioned in the Schedule-II of the Act. After holding the requisite qualifications he get registration under Part-I of the Gujarat Board of Ayurvedic and Unani System of Medicine and if he has produced certificate he will be entitled to the higher pay scale. As the petitioners are not holding the requisite qualifications and they have not been able to get registration from the Gujarat Board of Ayurvedic and Unani System of Medicines, under Part-I of the Act and no registration was produced by the petitioners. Hence, the petitioners are not entitled to get the higher pay scale. The petitioners have also not given any details regarding the persons similarly situated who have been granted the higher pay scale and not a single person has been granted the higher pay scale unless he has been registered under the Part-I of the Schedule of the Act. As the petitioners are not qualified for registration nor they have produced such required registration, their names cannot be included in the list of the qualified persons.

6. The petitioner no. 4 has given the information regarding qualification which goes to show that he is not qualified as per the requirements and D.B. Patel and Vaishya have filed Special Civil Application No. 1509/83 before this Court and their qualifications are in sub-judice. Mr. Shashtri and Mr. Sodha have produced the certificate of registration under the Part-I of the Act. Hence, they were holding the requisite qualifications as required by Schedule-II of the Act and they have been granted the higher pay scale from 1-10-1976. It was denied that the District Panchayat, Jamnagar issued the instructions for grant of higher pay scale to the persons similarly situated to the petitioners. None of the petitioners is holding requisite qualifications from the All India Ayurved Vidyapeeth, Delhi as required by the Schedule-II of the Act.

7. The case was taken up yesterday but none appeared on behalf of the petitioners to press this petition and today also none has appeared on behalf of the

petitioners. I have heard learned counsel for the State and considering the facts and circumstances of the present case, it appears from the averments made in the petition that none of the petitioners has obtained the registration under the Act. That may be due to the fact that they were not possessing the requisite qualification required by the Act as no rejoinder affidavit has been filed in order to substantiate the facts and circumstances stated in the counter affidavit. The respondents in clear words denied that any person similarly situated to the petitioners has been granted the higher pay scale. The petitioners have not been able to give specific particulars of those persons who are disqualified have been granted the higher pay scale.

8. In the facts and circumstances, in my opinion, the petitioners have failed to make out a case for any relief. The petition has no merits. Accordingly, the same is dismissed. Rule is discharged, with no order as to costs. Interim order, if any, stands vacated.

-0-0-0-0-

/JVSatwara/